

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2916 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

LABHUBEN DEVJIBHAI VAGHELA BHANGIVAS, GAGHALI
Versus
GEB, SECRETARY, VIDHYUT BHAVAN

Appearance:

1. Special Civil Application No. 2916 of 2000
MS SADHANA SAGAR for Petitioner No. 1
MR SP HASURKAR for Respondents.
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CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 24/02/2004

ORAL JUDGEMENT

1. The petitioner has approached this Court making a
grievance that despite the fact that she having completed

three years' service as Part-timer in the post of Sweeper (Class-IV employee) with the respondents, her claim for regularization has not been considered. According to her, by virtue of the circular dated 26th December, 1980 the part-timer working on a permanent post for more than 3 years was required to be considered for permanent appointment provided a permanent post was vacant.

1.1. It appears that on earlier occasion the petitioner had filed Special Civil Application No. 3548 of 1999, which was disposed of by this Court [Coram : S.K. Keshote, J.] vide order dated 8th September, 1999, whereby the petitioner was directed to make representation to the respondents. In accordance with the said direction the petitioner made representation dated 16th September, 1999 which came to be turned down by the respondents vide order dated 22nd November, 1999, copy whereof is annexed to the petition. In the said order three reasons have been mentioned by the respondents for not accepting the claim of the petitioner.

2. It is submitted by Mr, Hasurkar, learned advocate for the respondents that the reasons contained in the order turning down the application are adequate enough not to grant this petition. However, considering the fact that the said order was passed on 22nd November, 1999 the case of the petitioner can be reconsidered on the present day situation.

3. Having heard Miss Sadhna Sagar, learned advocate appearing for the petitioner and Mr. Hasurkar, learned advocate for the respondents and having gone through the record of the petition, it is clear that the petitioner had been appointed on temporary basis as Sweeper with respondents on 1st January, 1989. There is no challenge to her appointment on the ground that it was done without following due procedure. I, therefore, take it that the said appointment even on the temporary basis was in accordance with the norms laid down for the said purpose and after due compliance with the procedure.

3.1. The question that now remains to be decided is that despite the circular dated 26th December, 1980 why the petitioner's appointment on the post of Water Server was not made on permanent basis. There is no dispute that the post is a permanent post. The very fact that the petitioner has been working daily for 8 hours shows that there was a need of full-time Water Server in the said department. Further that the circular of 26th December, 1980 itself prescribes that part-timer working

in the permanent post for more than 3 years has to be regularized on that post, if the vacancy is available. It may also be noted here that similar controversy had arisen in Special Civil Application No. 10518 of 1998 and its cognate matters wherein both the aforesaid circulars i.e. circular dated 26th December, 1980 and of 21st August, 1995 have been considered and thereafter the petitions have been allowed and appropriate directions for considering the cases of those petitioners for regularizing the services have been given. Since the identical question has been involved in this petition, the same is required to be allowed.

4. The respondents are, therefore, now required to be directed that irrespective of the Circular of 21st August, 1995, they shall consider the case of petitioner for appointment on permanent post in Class-IV and if the permanent post is found vacant, she shall be appointed on the same in accordance with her claim in the matter of seniority and the regulations and if otherwise she is not ineligible. Appointment should not be denied on the ground of overage or on the ground that it may amount to giving a back-door entry. This exercise to be carried out as early as possible, but in any case not later than 30th May, 2004. If need be, the petitioner can make appropriate representation, which will be considered in light of this judgment and in particular, the direction given therein.

The result is that this petition is, therefore, partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.